

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

KENNETH M. HOLCOMB,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-21-652-J
	)	
FNU GRANT, Warden,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner, a federal prisoner appearing pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging the execution of his sentence. [Doc. No. 1]. The matter was referred for initial proceedings to United States Magistrate Judge Shon T. Erwin consistent with 28 U.S.C. § 626(b)(1)(B), (C) and pursuant to his order, Respondent filed a Response [Doc. No. 10]. On review, Judge Erwin concluded that (1) the Bureau of Prisons (BOP) had correctly calculated Petitioner's sentence under 18 U.S.C. § 3585(b); (2) Petitioner did not qualify for relief under BOP Program Statement 5160.05 § 9(b)(4); and (3) this Court cannot consider, in a § 2241 action, allegations that the sentencing court erred in failing to grant Petitioner an adjustment or downward departure on his sentence. [Doc. No. 13]. Despite being cautioned that he must file any objection no later than December 6, 2021, *see id.*, Petitioner did not object and has waived his right to appellate review of the factual and legal issues addressed in the Report and Recommendation. *See Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 13] and DENIES Petitioner's Petition.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability (COA) when it enters a final order adverse to a petitioner. A

COA may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Petitioner has failed to make either showing and the Court denies the COA.

A separate judgment shall be entered.

IT IS SO ORDERED this 16<sup>th</sup> day of December, 2021.

  
BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE